



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2015-06;

Application No. D-11827]

Notice of Exemption involving BNP Paribas, S.A. (BNP or the Applicant)

Located in Paris, France

AGENCY: Employee Benefits Security Administration, U.S.
Department of Labor.

ACTION: Notice of Exemption

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The exemption affects the ability of certain entities with specified relationships to BNP to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84-14.

DATES: EFFECTIVE DATE: This exemption is effective as of the earliest date a judgment of conviction against BNP is entered in either: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York; or (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York.

FOR FURTHER INFORMATION CONTACT: Scott Ness, telephone (202) 693-8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: On November 26, 2014, the Department of Labor (the Department) published a notice of proposed exemption in the Federal Register at 79 FR 70661, for certain entities with specified relationships to BNP to continue rely upon the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14,^{**1**} notwithstanding judgments of conviction against BNP in: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York for conspiracy to commit an offense

^{**1**} 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law §175.10, and conspiracy in the fifth degree, in violation of Penal Law §105.05(1).

The proposed exemption contains conditions described in the QPAM class exemption, as well as a set of additional conditions, that must be satisfied in order for asset managers with specified relationships to BNP to engage in the transactions described in the QPAM class exemption. The individual exemption was requested by BNP pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury

to issue administrative exemptions under section 4975(c) (2) of the Code to the Secretary of Labor.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption published in the Federal Register. During the comment period, the Department received two written comments on the proposed exemption, one from Public Citizen (a public interest group) in opposition of the exemption, and the other from BNP.

A discussion of Public Citizen's comment and BNP's comment follows below. Any capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Summary of Facts and Representations in the notice of proposed exemption.

Public Citizen's Comments Relating to Criminal Activity of BNP

Public Citizen stated that legal tools, such as denial of the exemption, should be used to prevent criminal behavior. Public Citizen further asserted that convicted entities should not be permitted to engage in "[c]omplex or

higher risk investments,” and that the lack of a criminal record should be a prerequisite to manage investments. Public Citizen also questioned certain BNP representations that plans would incur substantial costs as a result of BNP Affiliated QPAMs and BNP Related QPAMs (collectively, the BNP QPAMs) losing their ability to rely upon the relief in PTE 84-14 due to the Convictions. Public Citizen stated further that while punishment that penalizes employees who did no wrong should be avoided, “collateral damage” cannot always justify an exemption. Instead, it argues that an appropriate inquiry should be whether plan clients of the affected BNP QPAMs receive better investment returns from investment activities requiring reliance on PTE 84-14 than they would otherwise receive.

Department’s Response

The Department notes that PTE 84-14 was granted based on an effort to improve the administration of the prohibited transaction rules of ERISA. Those rules prohibit various transactions between plans and certain parties in interest. The prohibited transaction rules sweep very broadly and, in some circumstances, could work to prevent beneficial transactions. For example, large employers and funds necessarily engage in a wide range of

transactions with parties in interest that pose little danger to plan participants. For example, all of the different service providers to plans are technically parties in interest. Accordingly, Congress gave the Department authority to issue exemptions from the broad reach of the prohibited transaction rules where it has determined that such exemptions are in the interest of, and protective of, affected plans and the participants and beneficiaries thereof, as well as administratively feasible.

Prohibited Transaction Exemption 84-14 (the QPAM Exemption) is one such exemption. A QPAM is a "Qualified Professional Asset Manager." By definition, QPAMs are large regulated banks, savings and loan associations, insurance companies or federally registered investment advisors that meet certain standards of size and independence. PTE 84-14 permits these independent plan asset managers to engage in a variety of beneficial arm's length transactions with parties in interest that would otherwise be prohibited. Under Part I of the class exemption, QPAMs cannot: engage in self-dealing transactions; act in their own interest or the interest of their affiliates; and/or engage in transactions with parties that are in a position to affect their independent

judgment, such as persons with ownership interests in the QPAM.

Primarily, PTE 84-14 simply permits QPAMs to engage in various arm's length transactions with parties in interest and obviates the need to undertake time consuming compliance checks for parties in interest, forego investment opportunities, or seek an individual exemption from the Department for each transaction. The conditions in the exemption were designed to ensure that the transactions covered therein are protective of and beneficial to affected plans.

The scope of the anti-criminal provision set forth in section I(g) of PTE 84-14 is very broad and covers entities with various relationships to a convicted entity. Some of those entities may not have had the ability to influence the policies, procedures or practices of the convicted entity; and they may not have been in a position to be influenced by the policies, procedures or practices of the convicted entity. Nevertheless, a consequence of the conviction of an entity with a business relationship to one or more QPAMs is that the QPAMs lose the ability to rely on the exemption for 10 years following the date of the conviction, unless granted individual exemptions.

In reviewing applications for such exemptions, the Department will on a case-by-case basis consider the circumstances relating to the loss of QPAM status, and the specific conditions necessary to prevent potential abuse. Of particular importance is the degree to which the investment and compliance operations of the QPAM can be sufficiently isolated from the influence of "bad actors". Based on such considerations, the Department has previously granted conditional individual exemptions that permit asset managers to continue to engage in the transactions described in PTE 84-14, notwithstanding that the asset managers were affiliated with, or otherwise related to, a convicted entity.

The Department has carefully considered Public Citizen's argument that BNP's exemption application should be rejected in order to deter criminal activity, the Department has concluded, however, that the interests of plan participants would be better protected by imposition of the stringent conditions set forth herein. It is unclear that the denial of the exemption application would have any meaningful effect on BNP's behavior. Moreover, the final exemption granted herein should promote adherence to strict fiduciary standards, insulate plans from any bad

actors, and provide much or all of the deterrent effect that would have been achieved through outright denial.

In this regard, it should be emphasized that BNP itself cannot act as a QPAM under the terms of the exemption, and that the BNP QPAMs were not involved in the criminal activities that give rise to the Convictions. Nor is the Department aware of any evidence that the investment management activities of the BNP QPAMs were affected, in any way, by BNP's criminal activities. Moreover, denial of the requested exemption would deprive BNP-related asset managers from the ability to act as QPAMs. It would not bar them from continuing to manage plan assets, and such managers could continue to engage in a wide range of transactions on behalf of those plans.

The Department also notes Public Citizen's comments regarding the complexity of the transactions engaged in by BNP QPAMs, the relative investment returns of funds managed by those QPAMs, and the cost to plans for switching to a new QPAM. Undoubtedly, these are important issues that should be considered by the independent plan fiduciaries who hire or retain BNP asset managers. The Department does not believe these considerations are relevant, however, to its determination as to whether the BNP QPAMs may continue

to engage in the transactions described in PTE 84-14 in light of the Convictions.

Public Citizen's Comments Regarding BNP Employees

Public Citizen states that none of the individuals involved in the conduct underlying the Convictions should be allowed to manage ERISA and IRA assets. Public Citizen additionally questions whether it can be verified that employees of the BNP QPAMs were not involved in the crimes, and asserts that BNP should identify the individuals that participated in the criminal conduct so that the Department can confirm that they are not involved in oversight of the BNP QPAMs.

The Department's Response

The Department believes that Public Citizen's concern is substantially addressed in the exemption as originally proposed, through Subsection I(f), which requires that each "BNP Affiliated QPAM," as defined in the exemption, ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any investment fund subject to ERISA and managed by such BNP Affiliated QPAM.

Unlike the conditions which are subject to correction in conjunction with the audit requirement, Subsection I(f) is not correctable through the audit process. Rather, a failure to abide by this condition will immediately and irrevocably disqualify a BNP Affiliated QPAM from the relief in this exemption for the entire period of the exemption. As with every condition of the exemption, the BNP Affiliated QPAMs must be able, at all times, to adequately demonstrate that this requirement has been met.

Public Citizen's Comment Regarding the Auditor

Public Citizen also questions the independence of the auditor required under the proposed exemption, and makes a request that the auditor be chosen by the Department (or subject to the Department's approval), that the auditor's reports be made public, including a description of instances wherein BNP Affiliated QPAMs were required to take remedial action, and that the auditor's reports be provided to the Department so that it may review the auditor's findings.

The Department's Response

The Department notes that a robust audit conducted by a sophisticated independent auditor, for the entire period

covered by this exemption, is an important condition for relief under this exemption. The Department has taken care to ensure the independence and rigor of the audit; it has tightened the stringency of the audit conditions from the original proposal; and it has enhanced its ability to exercise oversight, if necessary. For example, new Subsection I(h)(2) provides that the BNP Affiliated QPAMs and, if applicable, BNP, will provide the auditor "unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel." Former Subsections I(h)(2) through I(h)(8) have been renumbered as I(h)(3) through I(h)(9). In former Subsection I(h)(4), now Subsection I(h)(5), the Department substituted the word "procedures" for "steps" in the first sentence; the Department also added the phrase "and compliance with" to the second sentence to reinforce the requirement that the auditor test for operational compliance with the Policies and Training requirements. The Department also added a new Subsection I(h)(10), which requires the BNP Affiliated QPAMs and the auditor to submit to the Department "(A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement

agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than nine months after the date of the earlier of the Convictions (and one month after the execution of any agreement thereafter)." Additionally, the Department removed from former Subsection I(h)(5), now Subsection I(h)(6), the following two sentences: "Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall include an explanation of any corrective or remedial actions taken by the respective BNP Affiliated QPAM." A similar requirement that will be more broadly applicable to all of Section I(h) was moved to new Subsection I(h)(11) and requires the auditor to provide to OED, upon request, "all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan, audit testing, identification of any instances of noncompliance by the relevant BNP Affiliated QPAM, and an explanation of any corrective or remedial actions taken by the applicable BNP Affiliated QPAM."

The Department does not endorse the selection of any particular auditor. The Department instead sets a threshold for determining independence on behalf of the

auditor and requires expertise in the appropriate field. With this in mind, Subsection I(h)(1) expressly requires retention of an "independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA." In the event that the Applicant contemplates replacing the current auditor, the exemption now requires BNP to notify the Department as to the identity of the replacement auditor at least 30 days prior to any such replacement, and BNP must be prepared to demonstrate to the Department's satisfaction that such replaced auditor is independent of BNP, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption.

Importantly, the exemption language in Subsection I(h)(9), formerly Subsection I(h)(8), and new Subsection I(h)(11) expressly requires that the auditor's reports (including instances of remedial action taken) be submitted to the Department. Furthermore, the exemption contains a condition in Subsection I(g)(1)(v) requiring that the "BNP Affiliated QPAM does not make any material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans..." which is an obligation specifically applicable to the audit reports submitted by the BNP

Affiliated QPAMs and which is, therefore, a material condition for relief under this exemption. After the Department receives each audit report, the reports will become a part of the administrative record and available to the public through the Department's Public Disclosure Room.

Public Citizen's Hearing Request

Finally, Public Citizen requests that the Department hold a public hearing in connection with the proposed exemption.

The Department's Response

Pursuant to the Department's regulations at 29 CFR Part 2570.46, the Department will grant a hearing request where it is necessary to fully explore material factual issues raised by the person who requested the hearing.

The Department recognizes that Public Citizen's comment letter also contains numerous legal and policy objections that are similar to the legal and policy objections it raised during a public hearing the Department held on January 15, 2015. That public hearing related to a request by Credit Suisse AG for an individual exemption by Credit Suisse AG, to permit Credit Suisse AG-related asset managers to continue to engage in the types of transactions

described in the PTE 84-14, notwithstanding certain convictions that were impending against Credit Suisse AG.

Given that the legal and policy issues raised by Public Citizen in this case are not novel and were also raised and fully developed by them at a public hearing, and do not raise significant relevant factual issues concerning BNP, the Department has concluded that there is no need to hold an additional hearing in this case. Accordingly, the Department has determined not to hold a hearing.

BNP's Comment

The Applicant's comment requests several confirmations regarding the conditions of the proposed exemption, and provides clarifications and additional information in support of the Summary of Facts and Representations in the proposed exemption. The Applicant's requests and clarifications, and the Department's responses thereto, are as follows:

1. Section I(e).

The Applicant's comment requests confirmation with regard to Section I(e) of the proposed exemption, which provides that a BNP Affiliated QPAM will not use its authority or influence to direct an investment fund managed by the QPAM to enter into any transaction with BNP or

engage BNP to provide additional services for a fee paid by the investment fund. The Applicant requests that the Department confirm that this condition would not disallow a BNP Affiliated QPAM from trading in markets where BNP provides local subcustody services to global custodians of ERISA plans that are unaffiliated with BNP. According to the Applicant, to the extent that a BNP Affiliated QPAM enters into a transaction in a market where BNP is the local subcustodian, BNP might receive additional compensation from such global custodian.

The Department declines to provide the confirmation requested above. In this regard, the Department is concerned about the potential for self-dealing inasmuch as, depending on the facts and circumstances, a BNP Affiliated QPAM might effectively use its "authority or influence to direct" an investment fund to "enter into" a "transaction with" BNP or "provide additional services, for a fee borne by" the investment fund. The Department notes however, that it is not expressing a view on whether any particular transaction would constitute a separate prohibited transaction under ERISA or the Code.

2. Section I(g)(2).

The Applicant's comment requests confirmation with regard to Section I(g)(2) of the proposed exemption, which

requires that each BNP Affiliated QPAM immediately develop and implement a program of training (the Training) conducted at least annually for relevant asset management, legal, compliance, and internal audit personnel and that "the Training shall be set forth in the Policies." The Applicant requests that the Department confirm that this condition requires the Policies to expressly provide for the Training, but that the actual Training materials may be separate from the Policies and need not be duplicated verbatim within the Policies.

The Department notes that participation in the Training is a crucial component of adhering to the Policies and of the exemptive relief. Therefore, the Department confirms that the actual Training materials need not be duplicated within the Policies so long as the Policies provide for and incorporate the Training requirement and provide specific details regarding the Training materials, including the identification of the particular training program and the primary training materials, the effective date(s) of any training manuals, and a brief outline of any information on the topics covered within the materials.

3. Section I(h)(1).

The Applicant's comment requests confirmation with regard to Section I(h)(1) of the proposed exemption.

Section I(h)(1) requires that the BNP Affiliated QPAMs submit to an annual audit conducted by an independent auditor. Pursuant to this condition, the first audit must cover the first six months following the earlier of the convictions, with each subsequent audit covering a corresponding twelve-month period. The Applicant requests confirmation that the final audit need only cover the last six months of the disqualifying period under Section I(g) of PTE 84-14.

The Department clarifies that the final audit need only cover the remaining period under which this individual exemption is required. The Department adds that because there are two simultaneous cases that will lead to two separate Convictions (federal and state) for the same underlying conduct, the final period may be slightly longer than six months. That is, this individual exemption is effective upon the earlier of the two Convictions, but will remain in effect until ten years after the later of the two Convictions.

4. Section I(1).

The Applicant's comment requests confirmation with regard to Section I(1) of the proposed exemption, which requires BNP to provide to interested persons a notice of the proposed exemption along with a separate summary

describing the facts that led to the Convictions, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84-14. The Applicant requests confirmation that the notice to interested persons required in accordance with Section (I)(1) was required to be sent only to ERISA-covered plans and IRAs that were clients as of the date the proposal was published in the Federal Register, and with respect to which PTE 84-14 may be used. Furthermore, the Applicant notes that Part II of the Form ADV is provided to each new separately managed account client and to the sponsor of each pooled fund prior to the inception of any asset management mandate. In the case of any banks or other entities that are not Registered Investment Advisors (and therefore do not maintain a Form ADV), the following disclosure will be included in the asset management or other account agreement: "In managing the account, [the Manager] may rely on the exemptive relief provided by U.S. Department of Labor Individual Prohibited Transaction Exemption 2015-[XX]. The exemption enables [Manager] to act as a "qualified professional asset manager" under PTE 84-14, notwithstanding the criminal conviction of an affiliate, BNP Paribas SA, for its role in certain U.S. dollar transactions involving parties subject to U.S.

sanctions. [The Manager] was not involved in that conduct or that conviction. A copy of the proposed and final exemption may be found on the Department's website, [http://www.dol.gov/ebsa/regs/ind_exemptionsmain.html]."

The Department confirms that the Applicant properly interpreted the requirements related to notifying interested persons of the proposed exemption, subject to the understanding that prospectively, notice of BNP's conviction must appear in both Part I and Part II of the Form ADVs of the BNP Affiliated QPAMs that are Registered Investment Advisers (RIAs) and remain there for ten years, and, in the case of BNP Affiliated QPAMs that are not RIAs, the additional disclosure noted above must be included in the asset management or other account agreement.

5. The BNP Affiliated QPAMs.

The Applicant's comment makes certain clarifications to Paragraph 6 of the Summary of Facts and Representations, which describes BNP's relationship with the BNP Affiliated QPAMs. In this regard, Paragraph 6 provides that, "the BNP Affiliated QPAMs include Fisher Francis Trees and Watt, Inc., BNP Paribas Investment Partners Trust Company, BNP Paribas Asset Management, Inc., BancWest Investment Services, and Bishop Street Capital Management which are subsidiaries of Bank of the West and First Hawaiian Bank,

respectively, which themselves provide fiduciary services to ERISA-covered plans and IRAs. The Applicant represents that each of the above-named entities are third tier affiliates of BNP, and BNP owns all or substantially all interests, directly or indirectly, in such entities."

The Applicant's comment provides that the BNP subsidiaries described in Paragraph 6 either currently rely on PTE 84-14 or may wish to do so in the future on behalf of ERISA-covered plans or IRAs. The Applicant states further that the list of BNP Affiliated QPAMs may change at any time depending on an entity's ERISA-covered plan or IRA client base or a change in strategy. The Applicant also notes that, while the BNP Affiliated QPAMs identified as third-tier subsidiaries in the application are indeed third-tier subsidiaries, other entities identified as BNP Affiliated QPAMs may be on other tiers, such as First Hawaiian Bank and Bank of the West, which are second-tier subsidiaries. Nevertheless, according to the Applicant, BNP owns all or substantially all interests, directly or indirectly, in the entities identified as BNP Affiliated QPAMs. The Department takes note of the Applicant's clarifications to Paragraph 6 of the Summary of Facts and Representations.

After giving full consideration to the entire record, including the written comments, subject to the Department's responses thereto, the Department has decided to grant the exemption. The complete application file, with copies of the comments, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the Federal Register on November 26, 2014, at 79 FR 70661.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility

provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of the plan and of its participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of the plan;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION

Section I: Covered Transactions

The BNP Affiliated QPAMs and the BNP Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14² notwithstanding the Convictions (as defined in Section II(c)),³ provided the following conditions are satisfied:

² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

³ Section I(g) generally provides that "[n]either the QPAM nor any affiliate thereof...nor any owner...of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either

(a) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including officers, directors, agents other than BNP, and employees of such QPAMs) did not participate in the criminal conduct of BNP that is the subject of the Convictions;

(c) The BNP Affiliated QPAMs and the BNP Related QPAMs did not directly receive compensation in connection with the criminal conduct of BNP that is the subject of the Convictions;

(d) The criminal conduct of BNP that is the subject of the Convictions did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an

convicted or released from imprisonment, whichever is later, as a result of" certain felonies including: (1) Conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Falsifying business records in the first degree, in violation of Penal Law §175.10, and conspiracy in the fifth degree, in violation of Penal Law §105.05(1).

IRA);

(e) A BNP Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA and managed by such BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(f) Each BNP Affiliated QPAM will ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any "investment fund" (as defined in Section VI(b) of PTE 84-14) subject to ERISA and managed by such BNP Affiliated QPAM;

(g) (1) Each BNP Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) the asset management decisions of the BNP Affiliated QPAM are conducted independently of BNP's management and business activities; (ii) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA

and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the BNP Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the BNP Affiliated QPAM complies with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to

appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP. BNP Affiliated QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each Affiliated QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant BNP Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the

prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(h) (1) Each BNP Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies and the first of the audits must be completed no later than twelve (12) months after the earlier of the Convictions and must cover the first six-month period that begins on the date of the earlier of the Convictions; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each BNP Affiliated QPAM and, if applicable, BNP, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records,

transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement shall specifically require the auditor to determine whether each BNP Affiliated QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein;

(4) The auditor's engagement shall specifically require the auditor to test each BNP Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to BNP and the BNP Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective BNP Affiliated QPAM's noncompliance with the written Policies and Training described in paragraph (g) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the

auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective BNP Affiliated QPAM shall be promptly addressed by such BNP Affiliated QPAM, and any actions taken by such BNP Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective BNP Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(6) The auditor shall notify the respective BNP Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, an executive officer of the BNP Affiliated QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of

signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) An executive officer of BNP reviews the Audit Report for each BNP Affiliated QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each BNP Affiliated QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), Suite 400, 200 Constitution Avenue, NW, Washington DC 20210, no later than 30 days following its completion, and each BNP Affiliated QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM;

(10) Each BNP Affiliated QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than nine months after the date

of the earlier of the Convictions (and one month after the execution of any agreement thereafter); and

(11) The auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan, audit testing, identification of any instances of noncompliance by the relevant BNP Affiliated QPAM, and an explanation of any corrective or remedial actions taken by the applicable BNP Affiliated QPAM

(12) BNP must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until BNP demonstrates to the Department's satisfaction that such new auditor is independent of BNP, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(i) The BNP Affiliated QPAMs comply with each condition of PTE 84-14, as amended, with the only exceptions being the violations of Section I(g) that are attributable to the Convictions;

(j) Effective from the date of publication of this granted exemption in the Federal Register, with respect to each ERISA-covered plan or IRA for which a BNP Affiliated

QPAM provides asset management or other discretionary fiduciary services, each BNP Affiliated QPAM agrees: (1) to comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (2) not to waive, limit, or qualify the liability of the BNP Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the BNP Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse

consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of this granted exemption in the Federal Register, each BNP Affiliated QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services;

(k) Each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such BNP Affiliated QPAM relies upon the relief in the exemption;

(l) The BNP Affiliated QPAMs provided a notice of the proposed exemption along with a separate summary describing the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84-14 to: (1) each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a BNP Related

QPAM; and (3) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each distribution agent of the fund with a request that such distribution agent forward the documents to its clients.

(m) A BNP Affiliated QPAM will not fail to meet the terms of this exemption solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. A BNP Related QPAM will not fail to meet the terms of this exemption solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this exemption.

Section II: Definitions

(a) The term "BNP Affiliated QPAM" means a "qualified professional asset manager" (as defined in Section VI(a) **4** of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which BNP is a current or future

4 In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

"affiliate" (as defined in Section VI(d) of PTE 84-14).
The term "BNP Affiliated QPAM" excludes the parent entity,
BNP.

(b) The term "BNP Related QPAM" means any current or future "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which BNP owns a direct or indirect five percent or more interest, but with respect to which BNP is not an "affiliate" (as defined in Section VI(d) of PTE 84-14).

(c) The term "Convictions" means the judgments of conviction against BNP in: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law §175.10, and

conspiracy in the fifth degree, in violation of Penal Law §105.05(1).

Effective Date: This exemption is effective as of the earliest date a judgment of conviction against BNP is entered in either: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York; or (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York.

Signed at Washington, DC, this 9th day of April, 2015.

Lyssa Hall,
Director of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

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